

FLOOR STOCK REFUNDS FOR CEMENT MIXERS

DECEMBER 9, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLS, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 17658]

The Committee on Ways and Means, to whom was referred the bill (H.R. 17658) to provide floor stock refunds in the case of cement mixers, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, line 5, strike out "end of the ninth month" and insert "last day of the ninth calendar month".

Page 2, line 6, strike out "bill" and insert "Act".

Page 2, beginning in line 7, strike out "on or before the sixth month" and insert "on or before the last day of the sixth calendar month".

Page 2, line 9, strike out "bill" and insert "Act".

Page 2, line 11, strike out "the ninth month" and insert "the last day of the ninth calendar month".

Page 2, line 12, strike out "bill" and insert "Act".

Page 3, line 19, strike out "it" and insert "if it".

I. SUMMARY

Until July 1, 1968, cement mixer bodies and parts and accessories were held not to be subject to the truck tax or to the tax on truck parts and accessories. As of that date, however, the Internal Revenue Service held these bodies and parts and accessories to be subject to these taxes. In the Tax Reform Act of 1969, Congress removed the tax on these cement mixer bodies and parts and accessories effective as of January 1, 1970. This bill, H.R. 17658, provides for floor stocks refunds in the case of taxpaid cement mixer bodies and parts and accessories which were in the hands of dealers on January 1, 1970.

This bill is reported unanimously by your committee and the Treasury Department indicated it has no objection to the bill.

II. REASONS FOR BILL

Until 1968, the excise tax on manufacturers sales of automobile truck bodies was not applied in the case of concrete mixers where the actual mixing of the concrete occurred in the tank mounted on a truck chassis. In 1967, the Internal Revenue Service changed its position effective July 1, 1968, and held that these concrete mixers were not designed and adapted by the manufacturer for purposes predominantly other than the transportation of property on the highway. In the Tax Reform Act of 1969, the Congress concluded that the prior position of the Internal Revenue Service with respect to concrete mixers better expressed the intent of Congress as to the appropriate tax treatment of cement mixers. As a result, in that Act the truck tax and truck parts and accessories tax were made inapplicable to cement mixer bodies and to parts and accessories for those bodies sold on and after January 1, 1970. No provision was made for floor stocks refunds in the 1969 Act, however, for those items upon which tax had been paid and which were still in the hands of dealers on the date the tax was repealed.

Because of the absence of the usual floor stocks refund provision, dealers have had to absorb excise taxes ranging up to \$700 or \$800 for each mixer in inventory on January 1, 1970, on which tax had been paid. This not only places heavy financial burdens on dealers with tax-paid stocks of cement mixers but also places them at a competitive disadvantage as compared with dealers who purchased stock from manufacturers tax free in 1970 (or acquired stock on a consignment basis tax free in 1969, and still had the mixers in stock on January 1, 1970).

The granting of refunds for taxpaid floor stocks in cases like those involving cement mixers is customary, although omitted in the 1969 action. Present law, for example (sec. 6412 of the code), provides for refunds on floor stocks of automobiles, trucks, tires and tubes, on the dates these taxes are scheduled for reduction or elimination. Similarly the Excise Tax Reduction Act of 1965 provided for floor stocks refunds in many cases where taxes were reduced or repealed by that Act.

Refunds generally are allowed in the types of situations referred to above so the dealer will not be required to bear the full burden of the tax at a time when the tax is reduced or eliminated and also to remove a competitive discrimination against the dealers with large inventories at the changeover date. Your committee believes that the same reason dictates the allowance of floor stocks refunds for taxpaid stocks of cement mixers in dealers' hands on January 1, 1970.

It has been estimated that the total amount of refunds will be approximately \$200,000 to \$250,000.

III. EXPLANATION OF PROVISION

The bill provides that a dealer is to be entitled to floor stocks refunds (without interest) if, on January 1, 1970, he held any new cement mixers which had been subject to the truck tax during the period between June 30, 1968 (the effective date of the Internal Revenue Service ruling that such articles were subject to the truck tax), and January 1, 1970 (the effective date of the 1969 legislation on this point).

Under the bill, by the end of the sixth calendar month beginning after the date of enactment of the bill, the dealer must submit a request to the manufacturer for the refund. By the end of the ninth calendar month beginning after the date of enactment, the manufacturer must file a claim with the Internal Revenue Service for credit or refund of the tax on those floor stocks. By that time, the manufacturer also must have either reimbursed the dealer for the amount of the tax or have obtained written consent from the dealer for the allowance of the credit or refund.

The bill also provides floor stocks refunds for parts and accessories designed primarily for use on or in connection with such cement mixers. (Those parts and accessories were exempted from tax by the same 1969 Act provision that exempted the cement mixer bodies.) In such a case the tax to be refunded is the 8-percent parts and accessories tax (sec. 4061(b)), and not the 10-percent truck tax (sec. 4061(a)).

Except for the fact that more time is allowed for filing the refund claims, the refund procedure is substantially the same as the procedure already provided under present law for automobiles, trucks, etc. (sec. 6412 of the code) and the procedure provided for a number of manufacturers excise taxes in the Excise Tax Reduction Act of 1965 (sec. 209 of that Act

○

